

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

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901 N. 5TH STREET

KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Lake Road Warehouse Co.
1400 Lower Lake Road, Box 6362
St. Joseph, Missouri 64506

EPA ID No. MOD006851323

Respondent.

Proceedings under Section 7003 of the
Resource Conservation and Recovery Act,
as amended, 42 U.S.C. § 6973, and
Section 106(a) of the Comprehensive
Environmental Response, Compensation, and
Liability Act, as amended, 42 U.S.C. § 9606.

Docket No. RCRA-07-2008-0003

UNILATERAL ADMINISTRATIVE
ORDER

I. JURISDICTION AND PRELIMINARY STATEMENT

1. This Administrative Order ("Order") is issued to the Lake Road Warehouse Company, St. Joseph, Missouri ("Lake Road" or "Respondent"). Lake Road is a Missouri corporation in good standing. This Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 7003(a) of the Solid Waste Disposal Act of 1976, commonly referred to as the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. § 6973(a). The authorities vested in the Administrator pursuant to RCRA have been delegated to the EPA Regional Administrators by EPA Delegation Nos. 8-22-A and 8-22-B, dated May 11, 1994 and have been further delegated to the Director of the Air and Waste Management Division by EPA Delegation Nos. R7-8-022-A and R-7-8-022-B, dated January 1, 1995 and revised September 16, 2007. Notice of the issuance of this Order has been given to the State of Missouri, in accordance with Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

2. This Order is also issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended (CERCLA), and delegated to the

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Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B, dated November 1, 2001 and May 11, 1994, respectively, and further re-delegated to the Director of the Superfund Division, by EPA Delegation Nos. R7-14-014-A and R7-14-014-B, dated April 24, 2002 and April 19, 1999, respectively.

II. STATEMENT OF PURPOSE

3. This Order concerns the Lake Road warehouse facility located at 1400 Lower Lake Road in St. Joseph, Missouri (hereinafter referred to as the "facility"). The Order requires Respondent to: (a) refrain from removing or relocating the current materials located at the facility until EPA has approved such activity, (b) immediately certify compliance with RCRA or cease waste generation and management activities at the facility until such certification can be made, (c) restrict access to areas where there has been a release of hazardous material within the facility, and (d) formulate a plan for proper storage, management and disposal of all solid and/or hazardous wastes pursuant to the applicable requirements of RCRA, including but not limited to, immediate clean-up of releases, investigation to determine off-site migration of waste, and clean-up of the building and any contaminated surrounding areas.

III. PARTIES BOUND

4. This Order applies to and is binding upon Respondent and its heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

5. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

IV. FINDINGS OF FACT

6. Lake Road operates as a clearing house and commodity storage facility in which it purchases large amounts of industrial chemicals and then re-sells them in smaller quantities to its customers. Most of Lake Road's business involves wastewater treatment chemicals; however, it also handles industrial cleaners and laboratory chemicals.

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7. Accumulated materials on-site consist of various outdated, damaged or otherwise discarded chemicals, solvents and solvent materials which were initially acquired from sources such as chemical suppliers, damaged freight agents and companies reducing their inventory.
8. Respondent's main warehouse is approximately one-quarter mile long by 60 feet wide. Adjacent to the main warehouse is a Yeast Building and a building used by Boller Automotive as a car racing shop. A trailer home is also located about 25 feet west of the Yeast Building and serves as the residence for a single mother with two children.
9. There is also a small dilapidated building located on the southwest side of Respondent's property. Near this building is a groundwater monitoring well.
10. Respondent's facility is located at 1400 Lower Lake Road in St. Joseph, Missouri. It currently employs two full-time and two part-time employees.
11. Respondent's facility is located in a mostly industrial area. It is surrounded by industry to the north, east and west, and by a closed landfill formerly owned by St. Joseph Light and Power and a residential area to the south.
12. Respondent's facility has been in operation since the 1940s. On or about August 26, 1987, Respondent submitted a Notification of Hazardous Waste Activity to the Missouri Department of Natural Resources (MDNR) when it began to eliminate waste inventory in the warehouse. Following its receipt of this Notification, MDNR assigned a RCRA identification number for this facility: MOP000000217. Although its intent was to become a temporary one-time generator of hazardous waste for 30 days during this clean-out, due to scheduling and sampling delays, no waste was transported off-site during the 30-day period. Thus, on or about November 24, 1987, Respondent submitted a subsequent Notification of Hazardous Waste Activity to MDNR. MDNR then assigned another RCRA identification number to the facility: MOD006851323. In both instances, Respondent reported itself as a generator of less than 1,000 kilograms per month of hazardous waste (i.e., a small quantity generator).
13. On January 14 and 21, 1988, contractors for EPA visited Respondent's facility to investigate an anonymous allegation that 55-gallon drums of chemicals were being illegally disposed near the facility. Although the contractors did not observe any evidence of illegal chemical discharge, the contractors noted the presence of hazardous materials such as flammable liquids and solids, corrosives and oxidizers. At the time, it was apparent to the contractors that it was not Respondent's practice to inventory all of the chemical products (and their volumes) stored in the warehouse. In the EPA contractor's opinion, "the warehouse chemical storage had exceeded safe limits." In addition, a large quantity of the drums containing the various

hazardous chemical wastes were in poor deteriorating condition. Respondent's representatives stated that they were in the process of selling the useable chemical products and disposing of all remaining chemical product in an effort to comply with federal hazardous waste storage regulations.

14. On January 28, 1988, representatives from MDNR conducted a RCRA compliance evaluation inspection at Respondent's facility as a follow-up to the January 14 and 21 investigations. During the inspection, Respondent's owner was unable to provide an estimate for the volume of hazardous material inventory on-site at the time. The owner told MDNR that although he attempted to maintain a stable ratio of sales to acquisitions to avoid excessive inventory and accumulation of non-saleable items, a lack of demand coupled with deterioration of some materials resulted in an overall accumulation of non-useable, waste items in the warehouse. Some aqueous products and other materials had been rendered non-useable through repeated freezing, photoreactivity and age-related deterioration.

15. Of the wastes on-site during the January 28, 1988 inspection, it was estimated that approximately 30 to 40 percent were comprised of liquid hazardous wastes including ignitable and/or corrosive organic and inorganic solvents and caustics, cleaning agents and discarded commercial chemicals. In addition, 20 percent consisted of a variety of solid hazardous materials contained in a large inventory of discarded laboratory chemicals; approximately 20 to 30 percent consisted of bulk quantities of non-hazardous solid wastes; and the remaining 10 percent of the wastes were characterized as "unknowns." The unknowns resulted from containers with lost labels and purchase of items that were either mis-labeled or simply included in a lot purchased as an unknown. Many of the waste items were in excess of 20 years of age. The age of many other waste items could not be determined due to faded or missing labels.

16. MDNR cited Respondent for many "unsatisfactory features" following the January 28, 1988 inspection, including unpermitted storage of hazardous waste for a period exceeding 90 days; failure to comply with large-quantity (greater than 1000 kilograms) generator requirements; storage of hazardous wastes in leaking or damaged containers; storage of incompatible wastes in common holding areas that do not incorporate a berm, dike, wall or other device; failure to store liquid hazardous wastes in a containment structure; failure to label and mark accumulation dates on containers of hazardous waste; and failure to complete land disposal notifications and keep manifest copies.

17. During the inspection, MDNR observed that these wastes were being stored in a building constructed of corrugated sheet metal with segmented window frames. The structure was unheated and not air conditioned. Although the structure was kept locked, no additional security

provisions were utilized. The concrete flooring was cracked and worn in some areas, and visible staining and residue build-up from container releases were observed in storage areas.

18. MDNR observed that many of the commercial and laboratory chemicals were stored in an insecure manner. Many containers were either leaking, bulged or severely corroded. Fiber drums containing cleaning agents and adhesive compounds were ruptured, allowing material to accumulate on the flooring. Reactive materials were observed to be interspersed with ignitable, corrosive and unknown wastes. In addition, the lack of adequate storage space resulted in the aisle spacing being virtually non-existent. Given the types and quantities of wastes in storage, the MDNR inspectors found the potential for catastrophic release (fire, explosion) of waste constituents to be "unacceptably high." In addition, MDNR noted that Respondent had not prepared any type of contingency plan or training plan for the facility.

19. On April 13, 1988, MDNR made another unannounced visit to Respondent's facility to check on the activities that Respondent stated it had made in response to the January 1988 inspections. The MDNR representative noted substantial improvements in both the appearance of the storage areas and overall management practices. Seven trailer loads of containerized hazardous wastes had been removed and other reactive and incompatible wastes had been segregated and isolated. Some of the previously observed leakage residues had been cleaned up and removed. The MDNR representative did note, however, that the facility still housed a large stock of unused inventory including lab chemicals, process reagents and other chemical species.

20. On March 20, 1990, EPA conducted a compliance evaluation inspection at Respondent's facility. The EPA inspector noted that there was some visible residue and staining on the concrete floors from previous leaking containers, as well as some strong fumes in the building. At the same time, the inspector noted that the inventory records being kept by Respondent did not accurately reflect the materials that were currently in storage.

21. On January 24, 29, 30, and February 1, 8, and 13, 2008, EPA conducted a RCRA compliance evaluation inspection at Respondent's facility. During these inspections, the EPA inspector observed many materials which Respondent indicated had been stored on-site for a long time. Some of the chemicals appeared old and deteriorated (due to freezing, thawing and re-freezing). Many of the storage containers were in poor condition; specifically, the containers were corroded, torn, leaking and/or very dusty (encased with spider webs and vines). Many were either missing identification labels, or had labels that were very difficult to read. Overall, in the inspector's opinion, these materials in these containers did not appear to be useable or saleable.

22. EPA's inspectors compiled an inventory of the chemicals being stored in the warehouse. On February 13, 2008, EPA's inspector asked Respondent's representative to identify if any of

these chemicals were wastes. Respondent's representative identified approximately 69 different chemicals on the inventory as waste, including any chemicals which were stored in containers with no labels or unreadable labels.

23. The EPA inspector noted the presence of the following incompatible wastes, among others, being stored together, without being separated by means of a dike, berm, wall or other device:

- a. strong acids and strong bases (as examples, sodium hydroxide and potassium hydroxide were being stored in deteriorating containers near phosphoric acid and chromic acid; and acetic acid was being stored near caustic soda in the restroom);
- b. water reactive chemicals and alcohols (as one example, acetyl chloride was being stored in deteriorating containers near alcohols and diethylene oxide);
- c. strong oxidizers and aluminum (as one example, aluminum powder exposed in a broken glass jar were stored next to potassium permanganate and other oxidizers on the southeast side of the Yeast building); and
- d. strong oxidizers and combustibles (as one example, sulfur powder spilled from torn bags were stored next to chromic acid and phosphoric acid).

The mixing of these incompatibles could lead to consequences such as heat generation, violent reaction, fire, explosion, and generation of flammable and/or toxic gas.

24. The EPA inspector observed that the floor in the main warehouse had large cracks and gaps. In one area, the EPA inspector observed a large, deep hole in the floor where large ovens were formerly located. In addition, the roof leaked in various places, including those that allowed water to spill and/or splatter onto various chemicals stored in the warehouse. The EPA inspector also observed areas on the floor in which spills had occurred in the past.

25. The EPA inspector observed many different hazardous wastes or hazardous constituents in the warehouse at the facility. Among them include the following (along with their effects on human health or the environment):

- a. ETHYLENE OXIDE is a U115 listed hazardous waste and is used to make chemicals such as ethylene glycol; smaller amounts are used as a pesticide or to sterilize medical equipment. It is a flammable gas that is incompatible with strong acids, oxidizers, and alkalis. Exposure to ethylene oxide can cause irritation of

the eyes, skin, nose, throat, lungs, and damage to the brain and nerves. The Department of Health and Human Services has determined that ethylene oxide may reasonably be anticipated to be a human carcinogen.

- b. DIETHYLENE OXIDE, or tetrahydrofuran, is a U213 listed hazardous waste and is incompatible with halogens, strong oxidizing agents, strong reducing agents, strong bases and oxygen. It is highly flammable and must be stored under nitrogen; contact with air can create explosive peroxides. Contact with skin can cause dermatitis, and long-term exposure can lead to kidney or liver damage.
- c. COPPER CYANIDE is a P029 listed acute hazardous waste. It is used in the electroplating of copper and iron and as an insecticide or fungicide in paints. It is extremely hazardous in cases of inhalation or ingestion. Upon skin or eye contact, copper cyanide can cause inflammation. Repeated or prolonged exposure can cause organ damage.
- d. ACETYL CHLORIDE is a U006 listed hazardous waste. It is used in the manufacture of aspirin and acetaminophen, as well as in liquid crystal compositions. This substance is extremely corrosive and causes severe burns to any area of contact on the body. Its vapors can cause severe irritation to the eyes and respiratory tract. Acetyl chloride reacts upon contact with moist air and is incompatible with water.
- e. MERCURY OXIDE is a powder that was once used as a pigment. It is sensitive to light and is known to be incompatible with strong oxidizing agents, strong reducing agents, combustible materials or organic materials. Mercury is a constituent of D009 hazardous waste. Exposure to mercury oxide may be fatal through inhalation, swallowing or absorption through the skin. Chronic exposure can lead to a wide variety of health problems, including a build-up of metal in the brain, liver and kidney damage, loose teeth, impaired memory and central nervous system damage.
- f. PHOSPHORIC ACID is very hazardous in cases of skin contact, eye contact or ingestion. Acute health effects include damage to the mucous membranes of the eyes, mouth and respiratory tract, burns, coughing, choking, shortness of breath, redness, itching, blistering, and scaling. Chronic health effects include eye and respiratory tract irritation and bronchial infection. It is incompatible with oxidizing agents, metals, combustible materials and alkalis.

- g. SULFUR, in its powder form, is used primarily in fertilizers, but can also be used in gunpowder, matches, insecticides and fungicides. It is incompatible with moisture and oxidizing agents, and can combust when exposed to heat. Exposure to sulfur can cause irritation of the eye, skin, respiratory tract, and mucous membranes. It can also cause a burning sensation, coughing, wheezing, shortness of breath, laryngitis, headache, nausea and vomiting.
- h. SODIUM HYDROXIDE is used to manufacture soaps, rayon, paper, explosives, dyestuffs and petroleum products. It is also used in laundering and bleaching, metal cleaning and processing, oxide coating, and electroplating. It is also commonly present in drain and oven cleaners. Very low levels of sodium hydroxide can produce irritation of the skin and eyes, and exposure to sodium hydroxide solids and/or concentrated liquid can cause severe burns in the eyes, skin and gastrointestinal tract. Sodium hydroxide is very corrosive, and when dissolved in water or neutralized with a strong acid it liberates substantial heat, which could ignite combustible materials.
- i. POTASSIUM HYDROXIDE is used in agriculture as a fungicide or herbicide. It is also commonly used in manufacturing paper, soap, and textiles, as well as in the production of biodiesel and food. Alkaline batteries also use potassium hydroxide as an electrolyte. Potassium hydroxide is extremely destructive to all body tissues; it can cause severe burns to the skin, eyes, gastrointestinal tract and respiratory tract. It is incompatible with strong acids, aluminum, zinc, chlorinated hydrocarbons and acetone.
- j. HYDROFLUORIC ACID is a U134 listed hazardous waste which is commonly used to etch glass, remove surface oxides from silicon in the semiconductor industry and remove impurities from stainless steel. Hydrofluoric acid is an extremely hazardous liquid and vapor that can burn the skin, eyes and respiratory tract. Exposure can cause severe burns that may not be immediately painful or visible. Hydrofluoric acid is incompatible with many metals, organic materials, rubber and strong bases, and it reacts with steam and water to produce toxic fumes.
- k. ISOBUTYL ACETATE is used as a solvent in lacquers, resins, vegetable oils and fats, as well as to manufacture flavorings, perfumes and pharmaceuticals. It is a flammable liquid and vapor. Exposure to isobutyl acetate can cause irritation to the skin, eyes and respiratory tract and otherwise affects the central nervous

system. Reaction with nitrates, strong oxidizers, strong alkalis, and strong acids may cause fire and/or explosion.

- l. FURFURYL ALCOHOL is used either as an ingredient in manufacturing chemical products such as foundry resins, adhesives and wetting agents, or as a rocket fuel. It can cause irritation upon contact with the eyes or skin. Long-term exposure may cause organ damage. It is incompatible and highly reactive with strong acids and oxidizing agents.
- m. ISOBUTYL ALCOHOL is a U140 listed hazardous waste which is used in the production of lacquer and similar coatings, as well as in the food industry as a flavoring agent. It has also been used as a solvent in paint, varnish removers and inks. Isobutyl alcohol is a flammable liquid that can be harmful if swallowed, inhaled or absorbed through the skin. Specifically, it can cause irritation to the skin, eyes and respiratory tract and also affect the central nervous system. It is incompatible with oxidizing agents and inorganic acids.
- n. ETHYLENE GLYCOL MONOETHYL ETHER is a U359 listed hazardous waste. It is a widely used solvent in dyes, inks, resins, lacquers, paints and varnishes. It is also a component of many cleaning agents, epoxy coatings, paints, hydraulic fluid, and anti-icing fuel additives. It is a flammable liquid and vapor that may form explosive peroxides in air. If swallowed, inhaled or absorbed through the skin, it can cause irritation to the eyes and respiratory tract and affect the central nervous system. Animal data suggests that it can also cause birth defects. It is incompatible with strong oxidizers, strong acids, strong bases, copper and aluminum.

26. Exposure to the hazardous constituents outlined above through dermal contact, ingestion, or inhalation presents serious health risks to people who come into contact with these materials. Such persons may include Lake Road employees and customers, contractors, emergency responders, local, state and federal regulators, nearby residents and industry, and trespassers. The abatement actions required by this Order are necessary to remove the endangerment posed by current site conditions, i.e., the presence of leaking containers, storage of hazardous constituents for extended periods of time beyond allowable limits, and storage of incompatible materials together without proper separation.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

27. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C.

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§ 6903(15) and also as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

28. The property located at 1400 Lower Lake Road, St. Joseph, Missouri 64501 is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

29. The wastes stored and handled at Respondent's facility are "solid wastes" and/or "hazardous wastes," as defined in Sections 1004(27) of RCRA, 42 U.S.C. § 6903(27), and 1004(5) of RCRA, 42 U.S.C. § 6903(5), respectively.

30. The wastes stored and handled at Respondent's facility are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

31. The presence of solid wastes, hazardous wastes, and/or hazardous constituents in the drums, tanks and other containers and accumulated on the floor resulted from the past or present handling, storage, treatment, transportation, and/or disposal of solid wastes, hazardous wastes, and/or hazardous constituents.

32. Present conditions at the facility may constitute an imminent and substantial endangerment to health or the environment, within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

33. The conditions at the Site described in the Findings of Fact above constitute an actual or threatened release of hazardous substances from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9602(22).

34. Respondent has been, and is currently, contributing to such handling, storage, treatment, transportation and/or disposal of solid wastes, hazardous wastes and/or hazardous constituents at the facility within the meaning of RCRA and its implementing regulations.

35. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

36. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment and are not inconsistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, and CERCLA.

37. Respondent is the "owner" of a facility within the meaning of Sections 107(a)(1) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and 9607(a)(2).

VI. NOTICE TO STATE AND LOCAL AUTHORITIES

38. The State of Missouri and appropriate local authorities have been notified of the issuance of this Order pursuant to Section 7003(c) of RCRA, 42 U.S.C. § 6973(c) and Section 106(a) of CERCLA, 24 U.S.C. § 9606(a).

VII. ORDER

39. Based on the foregoing, Respondent is hereby ordered to perform the activities described in Section VIII of this Order and all other activities required by this Order.

VIII. WORK TO BE PERFORMED

40. Immediate Compliance with RCRA: Upon receipt of this Order, Respondent shall **cease all solid and/or hazardous waste handling activities at the facility** and provide certification to EPA, wherein Respondent describes how all of its waste storage and management activities are being conducted in compliance with the applicable provisions of RCRA and its implementing regulations. Respondent shall not resume any waste handling activities until EPA has reviewed and approved the certification required herein. Respondent shall also immediately restrict access to areas of the property where there has been a release of solid and/or hazardous waste.

41. Separation of incompatibles. Within fourteen (14) days of the effective date of this Order, Respondent shall ensure that any storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments is separated from the other materials or protected from them by means of a dike, berm, wall, or other device, as required by 40 C.F.R. § 265.177(c), as incorporated by reference at 10 C.S.R. 25-5.262(1). Furthermore, Respondent shall not place incompatible wastes, or incompatible waste and materials, in the same container; or place hazardous waste in an unwashed container that previously held an incompatible waste or material, in accordance with 40 C.F.R. §§ 265.177(a) and (b), as incorporated by reference at 10 C.S.R. 25-5.262(1). Within twenty-one (21) days of the effective date of this Order, Respondent shall provide documentation (e.g., written statements, photographs, etc.) to EPA's Project Manager identified in paragraph 52 below that these incompatible wastes and other materials have been separated.

42. Immediate use of containers in good condition. Within fourteen (14) days of the effective date of this Order, Respondent shall ensure that all containers holding hazardous waste are in good condition, as required by 40 C.F.R. § 265.171, as incorporated by reference at 10 C.S.R.

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25-5.262(1). Respondent shall use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired, pursuant to 40 C.F.R. § 265.172, as incorporated by reference at 10 C.S.R. 25-5.262(1). Within twenty-one (21) days of the effective date of this Order, Respondent shall provide documentation (e.g., written statements, photographs, etc.) to EPA's Project Manager identified in paragraph 52 below that all containers holding hazardous wastes are in good condition.

43. Posting: Respondent shall immediately post a sign at the facility which provides notice of the hazardous conditions present at the site in accordance with the requirements of Section 7003(c) of RCRA, 42 U.S.C. § 6973(c). The sign to be posted shall be at least twenty-four (24) by thirty-six (36) inches, and shall be made of weatherproof material in white or a brightly-colored background with large, clearly contrasting lettering. The sign shall be posted in a prominent place at or near the public entrance to the facility, and shall state: "Warning: Conditions at this site may present an imminent and substantial endangerment to human health or the environment." Within seven (7) days of the effective date of this Order, Respondent shall provide documentation (i.e., photographs) to the EPA Project Manager identified in paragraph 52 below that the sign has been posted. Failure to post the sign as directed in this paragraph will constitute a violation of this Order.

44. Notice of Intent to Comply: Within ten (10) days of the effective date of this Order, Respondent shall notify EPA of its intent to comply with this Order in accordance with Section XIII below.

45. Selection of contractor: Within fourteen (14) days of the effective date of this Order, Respondent shall select a contractor, subject to EPA approval, to carry out all activities set forth herein. EPA retains the right to disapprove of the selected contractors and/or subcontractors retained by the Respondent.

a. Respondent shall also notify EPA of the name and qualifications of its selected Project Manager within fourteen (14) days of the effective date of this Order. All work performed pursuant to this Section (Work to be Performed) shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste clean-up. Respondent's Project Manager shall be responsible for administration of all the Respondent's actions required by the Order. To the greatest extent possible, Respondent's Project Manager shall be readily available during all work to be performed hereunder.

b. Respondent shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Section (Work to be

Performed) at least seven (7) days prior to commencement of such work. If EPA disapproves of a selected Project Manager or contractor, Respondent shall retain a different Project Manager or contractor within five (5) business days following EPA's disapproval and shall notify EPA of the new Project Manager's or contractor's name and qualifications within seven (7) business days of EPA's disapproval. If EPA still disapproves of the selected contractor or Respondent fails to select a new contractor, then EPA reserves the right to perform any or all of the work required by this Order and to seek reimbursement of its costs from Respondent pursuant to applicable statutory authorities.

46. Conduct Complete Inventory of All Containers, Drums, Totes, Carboys, Tanks, Vats:

a. Within **twenty-one (21)** days of the effective date of this Order, Respondent shall submit to EPA's Project Manager, identified in paragraph 52 below, a written inventory of all containers, drums, totes, carboys, vats, and tanks. The description shall include a notation regarding the size of the container, its contents and quantity thereof. The description shall also include a waste determination in accordance with the requirements of 40 C.F.R. § 262.11, as incorporated by reference at 10.C.S.R. 25-5.262(1). To aid in completing this inventory, Respondent may elect to utilize the partially completed inventory compiled by EPA's inspector during the January/February 2008 inspections (a copy the inventory may be obtained from EPA's Project Manager).

b. If Respondent claims any of the materials above as a useable or saleable product, then Respondent must identify the material, describe the condition of the container, describe the location of the material in the warehouse and provide a photograph. In addition, Respondent must provide written documentation of: how this product has been used in the past by Respondent or its customers; any purchase or sale records between Respondent and other parties; the product's intended use in the future; and the Material Safety Data Sheet (MSDS). Respondent, however, shall refrain from relocating or removing from the facility any of the materials identified above without approval from EPA except as allowed by this Order.

47. As part of this inventory, Respondent shall submit to EPA's representative identified herein, a written Inventory and Immediate Removal plan for immediately shipping all hazardous waste currently located at the facility to an appropriate hazardous waste disposal facility. The plan shall be reviewed by EPA in accordance with the procedures identified in paragraph 52 below and shall include the following:

a. Identification of facility for disposal of spent or waste acids, sludges, wastewater, cancelled pesticides, outdated and unusable chemicals: The plan shall identify the disposal facility where Respondent proposes to ship these wastes.

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b. Disposal of spent or waste acids, sludges, wastewater, cancelled pesticides, outdated and unusable chemicals: The plan shall provide that within thirty (30) days of EPA's approval of Respondent's contractor selection, all activities related to the off-site shipment of the spent or waste acids, sludges, wastewater, cancelled pesticides, outdated and unusable chemicals will commence and shall continue in accordance with an EPA-approved schedule. The plan shall also provide that the off-site disposal of these materials be completed no later than ninety (90) days of EPA's approval of the plan.

c. Documentation: The plan shall provide that within ten (10) days of completion of off-site disposal of the solid and/or hazardous wastes, Respondent shall provide to the EPA documentation demonstrating that all disposal activities are complete and that all such activities were carried out in accordance with the applicable requirements of RCRA. Documents to be provided shall include all manifests, bills of lading, and other pertinent records.

This plan shall be implemented immediately upon approval by EPA.

48. In addition, based on the inventory required in paragraph 46, Respondent shall immediately determine its hazardous waste generator status and come into compliance with all requirements appropriate for that generator status. If necessary, Respondent shall submit an updated hazardous waste generator registration form to the State of Missouri, in accordance with 10 C.S.R. 25-5.262(2)(A). A copy of this form shall be sent to EPA's Project Manager identified in paragraph 52 below.

49. Waste Storage and Handling Plan: Within sixty (60) days of the effective date of this Order, Respondent shall submit to EPA's Project Manager, identified in paragraph 52 below, a written plan which demonstrates that all solid and/or hazardous waste generated at Respondent's facility in the future will be managed and otherwise handled in compliance with RCRA and in a manner which will prevent future releases of the wastes to the environment. The plan shall specifically describe how releases of solid and/or hazardous waste will be prevented during each step of handling. The plan shall also describe the procedures that will be utilized to respond to any spills and/or releases of solid or hazardous waste at the facility. The plan shall be implemented immediately upon approval by EPA.

50. Chemical Storage Plan: Within sixty (60) days of the effective date of this Order, Respondent shall submit to EPA's Project Manager, identified in paragraph 52 below, a written plan which provides specific procedures on how Respondent will manage all of its chemical inventory from the time of purchase to the time of resale to Respondent's customers. This Plan must address any management practices that Respondent will use to prevent prolonged storage of

these chemicals and include procedures to ensure that incompatible chemicals are properly stored and segregated.

51. **Site Characterization:** Within thirty (30) days of completion of off-site shipment of the wastes identified as part of the inventory required in Paragraph 46 above, Respondent shall submit to EPA's Project Manager identified in paragraph 52 below, a Site Characterization Work Plan to investigate the extent of contamination of the areas where these wastes were stored and/or where releases of solid and hazardous wastes have occurred. The Site Characterization Work Plan shall include a Field Sampling Plan, Quality Assurance Project Plan (QAPP), and Health and Safety Plan (HASP) to assess off-site migration of waste and provide a plan for decontamination of the building and any surrounding area.

a. The Site Characterization Work Plan shall include a schedule for completion of activities including the ultimate clean-up of any contaminated areas. It shall also include:

- i. a diagram of the facility and its structures, a narrative and pictorial description of the locations to be sampled, and the materials or media to be sampled;
- ii. a list of the hazardous constituents for which each sample shall be analyzed, based on the composition of the chemicals that were used and stored at the facility; and
- iii. a statement of the action levels proposed for the hazardous constituents described in paragraph ii) above that shall indicate whether contamination from hazardous wastes stored at the facility is present;

b. The QAPP shall address quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans" (EPA QA/R-5, EPA/240/B-01/003, March 2001) and "EPA Guidance for Quality Assurance Project Plans" (EPA QA/G-5, EPA/240/R-02/009, December 2002, as well as other such applicable guidance identified by EPA. The QAPP shall describe the procedures that will be used for sampling and analysis of the solid wastes identified in the inventory for the purpose of conducting hazardous waste determinations in accordance with RCRA, including 40 C.F.R. § 262.11, as incorporated by reference at 10 C.S.R. 25-5.262(1). The QAPP shall describe the proposed sampling procedures that will be employed to ensure that samples are collected and analyzed using EPA-approved protocols. In addition, the QAPP shall describe the number and type of samples to be collected, the method(s) of collection and analysis, and criteria for determining sampling locations.

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c. The HASP will be implemented during field activities. The HASP shall be consistent with applicable Occupational Safety and Health Administration regulations.

EPA shall review and approve, disapprove or require modification of these plans as set forth in paragraph 52 below. Respondent shall carry out all activities required pursuant to the EPA-approved plan in accordance with the schedules contained therein. Failure to timely complete activities shall be a violation of this Order. Within sixty (60) days of Respondent's completion of the field work, Respondent shall provide a Site Characterization Final Report to EPA's Project Manager identified in paragraph 52 below.

52. All plans submitted pursuant to this section of this Order shall be reviewed in accordance with the procedures outlined in this paragraph. The EPA will review the plan and may approve the plan, approve the plan with modifications, or disapprove the plan and provide comments to Respondent. If the plan is disapproved with comments, Respondent shall incorporate EPA's comments and resubmit the plan within fourteen (14) days of receipt of EPA's comments. If Respondent fails to revise the plan in accordance with EPA's comments, then EPA may unilaterally modify the work plan or report and Respondent shall implement such work plan or report as necessary to complete the work pursuant to this Order. If the plan is approved either upon initial submission or resubmission, Respondent shall commence implementation of the plan immediately upon receipt of EPA's written approval of the plan. Upon approval of the plan by EPA, the plan, including all activities and schedules for such activities, shall be incorporated into and made an enforceable part of this Order, and failure to implement any plan in accordance with the scheduled contained therein shall be deemed a violation of this Order. The EPA representative to whom all plans must be submitted is:

Kevin Snowden
Environmental Scientist
ARTD/RESP
U.S. EPA Region VII
901 N. 5th St.
Kansas City, Kansas 66101
snowden.kevin@epa.gov.

53. As a result of the Site Characterization required in paragraph 51 above, EPA may determine that certain additional tasks are necessary to achieve the purpose of this Order. These include, but are not limited to: expanded investigatory sampling of the air, soil, surface water, and/or groundwater to determine the nature and extent of contamination, excavation and disposal of contaminated materials, or other activities as necessary to protect human health or the environment. In the event such a determination is made, EPA will notify Respondent in writing

that Respondent must perform the additional work and will specify the basis and reasons for its determination that the additional work is necessary. Within fifteen (15) days of the receipt of such request, Respondent may request a meeting with EPA to discuss the additional work. Within thirty (30) days of notification of the need for additional work, or according to an alternative schedule agreed to by the parties, Respondent shall submit a work plan for such additional work to EPA. The plan will be reviewed by EPA in accordance with the procedures set forth herein. Upon approval by EPA, Respondent shall perform the additional work according to the EPA-approved plan. The EPA-approved plan shall be incorporated into and become an enforceable part of this Order. All additional work performed by Respondent under this subparagraph shall be performed in a manner consistent with this Order.

54. Split samples: Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing work under this Order. Respondent shall notify EPA not less than thirty (30) calendar days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that it deems necessary.

55. Removal Action Report: The Respondent shall submit a final Removal Action Report that details all activities conducted at the site in conjunction with the Order within forty-five (45) days after completion of all activities. The report shall include, but is not limited to, the following:

- A description of the actions that have been taken to comply with each element of the Order;
- Copies of all results of chemical or physical analyses conducted during this action, including the results of field screening or other "on-site" analyses;
- Copies of all hazardous waste manifests or other appropriate shipping papers (i.e., Land Disposal Restriction Notifications) that describe origin and destination, dates, amount, and the description of the materials being transported off-site;
- Copies of certificates of disposal from the selected disposal facilities; and
- Written certification that all hazardous waste leaks and spills have been cleaned up in accordance with the requirements of this Order. The certification statement shall be signed by a responsible official and shall contain the following language:

I certify under penalty of law that the information contained in or

accompanying this document is true, accurate, and complete.

As to the identified portions of this document for which I cannot personally verify the accuracy, I certify that based on my inquiry of the person or persons directly responsible for gathering the information, the information is true, accurate, and complete.

A "responsible official" for purposes of this provision means a president, secretary, treasurer or vice-president of the corporation or legal entity, or any person who performs similar policy or decision-making functions for the corporation or legal entity.

IX. RECORD RETENTION

56. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XVIII (Modification and Termination) of this Order, Respondent shall preserve and retain all non-identical copies of records and documents (including those in electronic form) which relate in any manner to the performance of the work required under this Order. Respondent shall also instruct its contractors and agents to preserve all such documents for a period of ten (10) years.

X. OPPORTUNITY TO CONFER

57. Respondent may, within three (3) days after the effective date of this Order, request a conference with EPA to discuss this Order. The conference must be scheduled to occur on or before **April 4, 2008**.

58. The purpose and scope of the conference shall be limited to issues involving the implementation of the work required by this Order and the extent to which Respondent intends to comply with this Order. This conference shall not constitute an evidentiary hearing, and shall not constitute a proceeding to challenge this Order. Any such conference shall not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference shall be made. Respondent may appear in person or by an attorney or other representative, at any conference held pursuant to Respondent's request thereunder. A request for a conference with EPA does not in any way delay or continue any of the deadlines or work to be performed by the Respondent.

59. Requests for a conference shall be made by telephone followed by written confirmation mailed by the following business day to the EPA contact identified in Paragraph 52.

XI. COMPLIANCE WITH OTHER LAWS

60. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

61. In the event of any action or occurrence during performance of the work which causes or threatens a release of hazardous waste or hazardous substances from the site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including but not limited to, any plans submitted pursuant to this Order, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the EPA representative identified in paragraph 52 above, or, in the event of his unavailability, notify the Regional Spill Line number listed in paragraph 62 below. In the event that Respondent fails to take appropriate response action as required by this paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.

62. In addition, in the event of any release of a hazardous substance from the site, Respondent shall immediately notify the EPA Regional Spill Line at (913) 281-0991 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9602(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIII. NOTICE OF INTENT TO COMPLY

63. Respondent shall provide, within ten (10) days after the effective date of this Order, written notice to EPA stating whether Respondent will comply with the terms of this Order. The notice shall be sent to EPA's representative identified in paragraph 52 above. If Respondent

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does not unequivocally commit to perform the work required by this Order, Respondent shall be deemed to have violated this Order and to have failed or refused to comply with this Order. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of any Respondent's assertions.

XIV. ENFORCEMENT AND RESERVATIONS

64. The United States reserves the right to bring an action against Respondent pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereinafter CERCLA), for recovery of any costs incurred by the United States related to this Order.

65. Notwithstanding any other provision of this Order, EPA reserves the right to perform its own studies, complete the work (or any portion of the work) required by this Order, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

66. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to RCRA, or CERCLA, or any other applicable law. Such additional enforcement actions may include, but are not necessarily limited to: actions taken pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to assess civil penalties and/or seek injunctive relief; actions taken pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), to compel corrective action at the facility; further actions under Section 7003 of RCRA to address conditions that may present an imminent and substantial endangerment to human health or the environment caused by any future releases of solid waste or hazardous waste from the facility. In addition, Respondent shall be subject to civil penalties of up to \$6,500 per day for any violation of this Order under Section 7003(b) of RCRA, 42 U.S.C. § 6973.

67. Notwithstanding any provision of this Order, the United States hereby reserves all of its information gathering, inspection and all enforcement authorities and rights under RCRA, CERCLA, and any other applicable statutes or regulations. The United States expressly reserves all rights it has to issue additional orders or to take other action it deems necessary or appropriate to address any other areas of the facility which the United States deems a threat to human health or the environment.

68. Respondent may be subject to civil penalties of up to \$32,500 per day for any violation of this Order under Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any costs

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incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). In addition, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. All penalties shall begin to accrue on the date that complete performance is due or a violation occurs and shall continue to accrue through the final day of correction of the noncompliance.

69. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand at law or in equity against any person for any liability arising out of or relating in any way to the facility.

70. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by said court order.

71. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves, and this Order is issued without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. liability for costs incurred by EPA for the performance of the work required under this Order in the event that Respondent fails to perform the work, in addition to any past or future costs incurred by EPA associated with responding to a release or threatened release of hazardous substances at or from the facility/site;
- c. liability for performance of response action(s) other than the work required by this Order;
- d. criminal liability;

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- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of hazardous waste or hazardous substances from the site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the site.

XV. SAMPLING AND ACCESS

72. EPA and/or its authorized representatives shall have access to the facility at all reasonable times for the purpose of reviewing the progress of Respondent in carrying out the provisions of this Order and for purposes including, but not limited to, inspecting and copying records, collecting samples, and verifying data. Nothing in this Order shall restrict EPA's rights under Section 3007 of RCRA, 42 U.S.C. § 6927, and CERCLA or other statutory authority.

XVI. EFFECTIVE DATE AND COMPUTATION OF TIME

73. This Order shall become effective immediately upon signature. All times for performance of ordered activities shall be calculated from this effective date. For the purposes of this Order, the term "day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or Federal holiday, the period shall run until the close of business of the next working day.

XVII. ADMINISTRATIVE RECORD

74. The EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 8:30 a.m. and 4:00 p.m. at the offices of EPA Region VII, located at 901 N. 5th St., Kansas City, Kansas, 66101. To review the Administrative Record, please contact EPA's representative identified in paragraph 52 above.

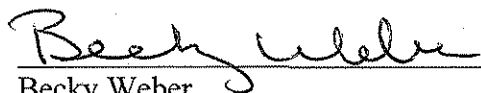
XVIII. MODIFICATION AND TERMINATION

75. EPA may modify or revoke this Order based upon information discovered during the course of implementation of the Order. Any modification shall be incorporated into a revised Order and issued to the Respondent in the form of a modified Unilateral Administrative Order. The provisions of this Order shall remain in full force and effect until all actions required by this

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Order have been completed and EPA has notified the Respondent, in writing, that the actions required by this Order have been completed. Respondent shall notify EPA in writing at such time as it believes that all such actions have been completed. The EPA shall have sole discretion in determining whether or not all such actions have in fact been completed. Failure to complete all activities required hereunder as directed by EPA shall be deemed a violation of this Order. The EPA's provision of written notice to Respondent pursuant to this paragraph shall not be construed as a waiver of any of EPA's rights to take further enforcement action under RCRA or any other laws.

IT IS SO ORDERED:



Becky Weber
Director
Air and Waste Management Division
U.S. Environmental Protection Agency
Region VII



Cecilia Tapia
Director
Superfund Division
U.S. Environmental Protection Agency
Region VII



Alex Chen
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII